

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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The Moody Bible Institute of Chicago)	File No. EB-03-KC-131
Licensee, KMDY-FM)	NAL/Acct. No. 200432560002
Keokuk, Iowa)	FRN 0006-7913-54
Chicago, Illinois)	

FORFEITURE ORDER

Adopted: December 21, 2004

Released: December 23, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five thousand dollars (\$5,000) to The Moody Bible Institute of Chicago (“Moody”), licensee of station KMDY-FM, for willful violation of Section 73.3527(c) of the Commission’s Rules (“Rules”).¹ The noted violation involves Moody’s failure to make available a complete public inspection file for station KMDY-FM during normal business hours.

2. On February 13, 2004, the Commission’s Kansas City, Missouri Office (“Kansas City Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”)² to Moody for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful violation of Section 73.3527(c) of the Rules and for willful and repeated violation of Section 73.1125(a)³ of the Rules.⁴ In its March 15, 2004 response, Moody seeks rescission of the forfeiture.

II. BACKGROUND

3. On June 23, 2003, a Commission agent from the Kansas City Office inspected the main studio of station KMDY-FM, Keokuk, Iowa. During the inspection, station personnel could not produce various items that are required to be in the public inspection file, including: the station license, current station ownership report, a copy of the publication *The Public and Broadcasting*, and a complete issues-programs listing.

4. On July 15, 2003, the Kansas City Office sent the first of two Letters of Inquiry (“LOI”)

¹ 47 C.F.R.. § 73.3527(c).

² See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432560002 (Enf. Bur., Kansas City Office, February 13, 2004).

³ 47 C.F.R. § 73.1125(a).

⁴ The Kansas City Office attributed \$5,000 to the Section 73.3527(c) violation and \$5,000 to the Section 73.1125(a) violation.

to Moody. The second was sent on September 4, 2003. Moody responded timely to both. After considering the inspection and the responses to both Letters of Inquiry, the Kansas City Office issued an *NAL* to Moody on February 13, 2004. The *NAL* found that Moody had apparently willfully violated Section 73.3527(c) of the Rules by failing to make available a complete public inspection file for station KMDY-FM during normal business hours and had apparently willfully and repeatedly violated Section 73.1125(a) of the Rules by failing to maintain a full-time management presence at station KMDY-FM.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁵ Section 1.80 of the Rules,⁶ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁷ In examining Moody’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁸

6. Section 73.3527(a)⁹ of the Rules requires non-commercial FM broadcast stations to maintain for public inspection a file containing the material specified in Section 73.3527(e)(1) through (e)(11) of the Rules.¹⁰ Section 73.3527(c) of the Rules requires licensees to make the public file available for public inspection at any time during regular business hours. On June 23, 2003, during regular business hours, Moody failed to make available a complete file for public inspection. Station KMDY’s manager could not find the station license, current ownership report, the publication *The Public and Broadcasting*, or a complete issues-program list. We find that Moody willfully¹¹ violated Section 73.3527(c) because it did not make specific items available for public inspection that are required to be in the public file.

7. Moody does not deny that the subject items were missing from the public file. Moody claims that the documents were later found and provided to the Kansas City Office subsequent to the inspection. Moody also asserts that “the problem was not that the documents weren’t at the station’s studio, or even somewhere in the public inspection file, but [the station manager] was for some unknown reason unable to locate the documents when asked to do so by the FCC inspector.”¹² Moody advises that the public inspection file has now been fully organized and contains all the elements required under the Commission’s Rules. Moody contends that under such facts and circumstances, the Commission has rescinded a public inspection file forfeiture and cites to *American Family Association, Inc.*, 18 FCC Rcd

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 C.F.R. § 73.3527(a).

¹⁰ 47 C.F.R. §§ 73.3527(e)(1) – 73.3727(e)(11).

¹¹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

¹² Response to *NAL* at page 5.

16530 (Enf. Bur. 2003) (“*AFA*”) and *Tabback Broadcasting Company*, 15 FCC Rcd 11899 (2000) (“*Tabback*”).

8. In the *AFA* case, *AFA* had been issued an *NAL* for violations at station KAUF-FM, including not having copies of the latest ownership report, the publication *The Public and Broadcasting* and the current issues/programs list in the public file. In its MO&O, the Bureau found that *AFA* had willfully violated Sections 73.3527(e)(4), 73.3527(e)(7), and 73.3527(e)(8) based on its admission that the station manager was behind on filing and did not place the required items in the public file. However, in canceling the *NAL* and admonishing *AFA*, the Bureau noted that there was a declaration that the required items were at least at the station. Here, we have no such declaration. Moody has not explained where the documents were, much less definitively stated that the documents were at the station. Thus, we do not find *AFA* to be applicable to the instant case.

9. In *Tabback*, the Commission found that Commission staff appropriately exercised their discretion in admonishing *Tabback* for its refusal on two occasions to permit unrestricted access to its public file and omission of annual ownership reports from the file. *Tabback* stands for the proposition that, under the circumstances of the case, admonishment was an appropriate disposition of the case and that Commission staff exercised their discretion accordingly. It should not be interpreted to mean that admonishment was the only appropriate disposition. In fact, in *KLDT-TV 55, Inc.*, 10 FCC Rcd 3198, 3200 (1995) (“*KLDT-TV*”), a case cited by the Commission in comparison to *Tabback*, a forfeiture was upheld for *KLDT-TV*’s failure to include three entire categories of documents in the public file.

10. Finally, we note that, although Moody’s public file is now reported to be complete, no mitigation is warranted on the basis of Moody’s correction of the violations. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”¹³ Moreover, we also note that, although the base forfeiture amount for public file violations is \$10,000, after considering the facts and circumstances of this case, the Kansas City Office determined that a \$5,000 forfeiture was appropriate. We do not believe that a further reduction is warranted.

11. Based on its response to the *NAL*, we find that Moody did not violate Section 73.1125(a) of the Rules and we cancel the portion of the forfeiture proposed for a violation of the main studio rule.

12. Moody also claims to have a history of compliance with the Commission’s rules. Although Moody acknowledges that the *NAL* found that at least five Notices of Violation had been issued to Moody, Moody argues that the issuance of a Notice of Violation (“NOV”) “is an investigatory device and is not a formal finding of a violation.” Moody also states that each of the cases was resolved in its favor. We disagree. The NOV documents a finding of a violation. Such a finding may be successfully refuted, however at the time the NOV is issued a determination has been made that a violation has occurred. NOVs which are not subsequently found to be inaccurate, and thus are indicative of true violations, represent instances of enforcement action. Prior instances of enforcement action will generally prohibit a successful claim of history of compliance with the Commission’s rules. There have, indeed, been prior instances of enforcement action taken against Moody.¹⁴ Moreover, to the extent that Moody argues that the noted NOVs were ultimately resolved in its favor, we note that the favorable resolution occurred only after Moody took corrective actions. As such, Moody does not have a history of overall compliance with the Commission’s rules and no reduction is warranted on this basis.

13. Finally, Moody questions the scrutiny given to its stations as compared to NPR stations.

¹³ See also *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21875 (2002); *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002).

¹⁴ See NOVs dated August 9, 1999 and March 16, 2004.

We note that this is not the proper forum for such a discussion.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁵ Moody Bible Institute of Chicago **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand (\$5,000) for its willful violation of Section 73.3527(c) of the Rules at station KMDY-FM.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁶ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁷

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Moody Bible Institute of Chicago, 820 N. LaSalle Blvd., Chicago, Illinois and to its counsel, Jeffrey D. Southmayd, 1220 19th Street, NW, Suite 400, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

¹⁵ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁶ 47 U.S.C. § 504(a).

¹⁷ See 47 C.F.R. § 1.1914.